IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No. 66 of 2007
In
COMPANY APPLICATION No. 100 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAMBOO PROLEN [INDIA] PRIVATE LIMITED - Petitioner(s)
Versus
. - Respondent(s)

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Appearance :
MRS SWATI SOPARKAR for Petitioner(s) : 1,
MR HARIN P RAVAL for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 17/09/2007

ORAL JUDGMENT

1.The present petition is for sanctioning the Scheme of Amalgamation. The petitioner is the Transferee Company. The Scheme which is proposed

to be sanctioned is produced at Annexure-G in the petition. As per the Scheme of Amalgamation, Goa International School Pvt. Ltd., whose registered office is situated at Goa and Laguna Kumarakom Resorts Pvt. Ltd., whose registered office is situated at Bangalore in the State of Karnataka are Transferor Companies.

2. This Court (Coram: M.R.Shah,J.) in Company Application No.100 of 2007 vide order dated 2.3.2007 had passed the order of dispensation of the meeting of all equity shareholders and unsecured creditors and the declaration was recorded that there are no secured creditors of the applicant Company, who is petitioner herein.

3. The present petition came to be admitted on 13.3.2007 and at the time when the petition was admitted the declaration was recorded that in the cases of the transferor companies seeking sanction of the High Court of Bombay as well as of High Court of Karnataka, appropriate proceedings are taken out. It was also ordered to advertise in two local newspapers namely; Indian Express (English Daily) (Ahmedabad

Edition) and Phool Chhap (Gujarati Daily) (Rajkot Edition). The notice was also issued to the Central Government through Regional Director, Department of Company Affairs, Mumbai.

4. The affidavit is filed by Mr.Dharmendra, Registered Clerk of the learned advocate Mrs.Soparkar together with the copy of the paper publication pursuant to the order passed by this Court. As per the affidavit filed dated 5.9.2007 of Vrajlal Vithaldas Joshi, Director of the petitioner Company, vide para 4, it has been stated that in response to the public advertisements, no objection is received by the petitioner or its learned advocate, opposing the Scheme of Amalgamation or otherwise.

5. In response to the notice issued to the Central Government, Mr.P.L.Malik, Assistant Registrar of Companies has filed the affidavit raising the objections based on the communication received by the Registrar of Companies vide order dated 19.4.2007 from the Regional Director, Company Affairs.

6. On behalf of petitioner Company Mr.Vrajlal

Vithaldas Joshi, Director has filed the affidavit dated 5.9.2007 in response to the objections raised on behalf of the Central Government.

7. The first objection pertains to compliance with the provisions of Sections 17, 94/97 and 21 of the Companies Act and for filing necessary forms with the Registrar of Companies, stands covered by the decision dated 25/27-6-2007 of this Court in Company Petition No.41 to 43 of 2007 in the matter of Shubhlaxmi Dyetex Pvt. Ltd., wherein this Court has observed as under:-

> "The first objection pertains to the desire of the Transferee/resulting Company to utilise the authorised capital of the Transferor Company and the insistence is made to increase the authorised capital as per the provisions of Sections 94 and 97 read with Schedule 10 of the Companies Act, 1956.
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> 8. I have heard Mr.Pahwa, learned Counsel appearing for all the Companies as well as Mr.Harin P. Raval, learned Assistant Solicitor General of India on the point raised by the Central Government as indicated hereinabove. As such, in view of the decision of this Court (Coram: K.J.Puj, J.) in Company Petition No.41 of 2005, similar objections by the Central Government in view of the reasons

recorded by this Court at para 16 in the said decision, came to be rejected mainly on the ground that it is a one-window system and once the scheme is sanctioned no such stamp duty or registration charges are required to be paid on increase of the share capital of the Company on amalgamation or merger.

9. Mr.Raval, learned Assistant Solicator General, did point out that the appeal is preferred against the decision of this Court in Company Petition No.41 of 2005, however, he fairly conceded that no orders are passed, staying operation or implementation of the judgement of the Single Bench of this Court. Therefore, as such, the objections raised on behalf of ROC cannot be maintained.

10. However, the only aspect, which did not come for consideration in the aforesaid decision and which may be required to be considered is the bonafide of the scheme. If, as a result of the amalgamation, the authorised capital is increased, the Central Government might raise the contention of additional stamp duty, but there may not be a double recovery of the stamp duty already paid. At the same time, if upon the amalgamation of the Companies and having been sanctioned by this Court, the consequent result is to increase the authorised share capital of the Companies, the Tranferee Company cannot take any undue benefit to the

extent that the authorised capital sanctioned if increased, the stamp duty which was otherwise payable would not be paid, though required under the law. As such, in such matters, even if reasonable view deserves to be taken to the extent of the stamp duty already paid by the transferee Company as well as the Transferor Company, whose share capital is merged into the capital of the Transferee Company.

11. The attempt on the part of the learned Assistant Solicitor General, Mr.Raval to contend that if there is any statutory provision requiring the payment of stamp duty, may be for second time, cannot be allowed to go away, merely because by agreement, the two companies have resolved to amalgamate, cannot be accepted for the simple reason that as such, by statutory fiction once the sanction is granted by this Court, not only the inter se rights get affected, but the companies stand amalgamated, resulting into of lawful consequence as it may accrue by statutory fiction. As observed earlier, neither Transferee Company can be allowed to take any undue benefits under the guise of the Scheme of amalgamation, nor the contention of the Central Government can be accepted for recovery of double stamp duty, which is otherwise not warranted, nor would meet with the test of reasonableness, even if

the objections are tested on sound principles of equity and good conscience."

8. The another objection pertaining to change of name and compliance to provisions of Sections 17 and 21 of the Act is also covered by the decision dated 3.8.2007 passed by this Court in Company Petition No.30 to 33 of 2007 in the matter of Norfolk Infotech Private Limited, wherein this Court observed as under:-

"10. Concerning to the second objection raised on behalf of the Central Government for compliance to the provisions of Section 21 of the Companies Act, since a change in the name is to result into as a consequence of the scheme, if ultimately sanctioned, it appears that the said aspect is also covered by the decision of this Court in the case of Search Chem Industries Ltd. reported at (2006) 129 Comp Case 471(Guj), wherein this Court by relying upon the other decision of the Bombay High Court and also of this Court, observed as under:

"8. Notice of the petitions has been served upon the

Central Government and Ms. P.J.Davawala, Additional Standing Counsel appearing for the Central Government. Ms. Davawala has informed the court and put on record the letter from the Registrar of Companies of Gujarat dated 21.8.2003 along with the letters of the Regional Director dated 3.7.2003 and 13.8.2003 indicating that the Central Government has made three observations. These observations are with regard to the clauses of the scheme pertaining to the change in the name of the companies, Change in the Object Clause of the Transferee Company and the pending prosecution against the De-merged company.

9. I have heard Ms. Swati Saurabh Soparkar, learned advocate for the petitioner companies on these issues. It is submitted by her that the observations pertaining to the clauses of the scheme, it is an accepted position that the scheme under section 391 and 394 is a complete code in itself and considering the principle of "Single Window Clearance" it is not necessary for the petitioner company to get separate clearances prescribed under the Companies Act, 1956, The said submission is substantiated by the decision of the Bombay High Court in the matter of PMP Auto Industries Limited (80 Co.Cases 819) as also in the case of Rangkala Investments Limited (89 Com.Cases 774). With regards to the pending prosecution against the de-merged company, it is submitted that since the De-merged company is going to subsist even after the sanction of the scheme and the Scheme nowhere proposes to affect the same, the pending proceedings may continue in accordance with law.

10. Considering the above submissions and having gone through the petitions, I am satisfied that the observations made by the Central Government are misconceived. As held by this Court in the case of Rangkala Investments Limited (supra) and Manekchowk Mills Limited (supra) as also the Bombay High Court in the case of PMP Auto Ltd.(supra), the Scheme proceedings under section 391-394 give "single window clearance" and there is no reason to insist for a separate formality to be followed for change in the name or the Object clause of the Memorandum of Association of the Resulting Company. However, the petitioner companies are directed to file necessary forms as prescribed under law in the office of the Registrar of Companies to place on record these changes. As to the 3rd objections, in view of the fact that the De-merged company continues to subsist, the pending proceedings would obviously continue in accordance with law."

9. Similar will be the situation in the present case.

10. Therefore, it appears that the objections can be maintained to the extent of filing necessary

declaration with the Registrar of Companies, as consequence of sanction granted by the competent Court, including this Court and the scheme becoming effective. Hence, in view of the aforesaid the only direction, which may be required is that the company concerned shall file necessary forms/declarations with the Registrar of Companies for change, if effected for compliance to Section 17, 94/97 and 21 of the Companies Act and further the requisite fees shall also be payable after getting set off of the fees already paid by the transferor Companies for their authorized capital. Hence, ordered accordingly.

11. The second objection pertains to the sanction, which may be granted by the High Court of Bombay (Goa Bench) or the High Court of Karnataka, deserves to be considered.

12. The learned Counsel during the course of hearing has placed on record copy of the order dated 27.4.2007 passed by the High Court of Bombay at Goa in Company Petition No.7 of 2007, whereby the sanction has been granted in respect of one of

the Transferor Companies namely; Goa International School Pvt. Ltd. It has been further stated that the matter is awaited for sanction in the appropriate proceedings so far as another transferor Company is concerned by the High Court of Karnataka.

13. Hence, the sanction even if it is to be granted by this Court, would be subject to the orders of the High Court of Karnataka since the scheme of Amalgamation is a composite and inter-connected. Ordered accordingly.

14. Hence, subject to the aforesaid observations and directions, the present Scheme of Amalgamation in respect to the petitioner Company is sanctioned as per the provisions of the Companies Act.

15. The petition is allowed to the aforesaid extent.

16. The fees of the Assistant Solicitor General shall be paid by the petitioning Company which is quantified at Rs.3,500/-. It will be open to the petitioning Company to pay the cost directly to the Counsel concerned by 'A/c. Payee' cheque.

17.9.2007 **(Jayant Patel, J.)**

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